
**BZA-1930
JERRY DOWNHAM
Variance**

**STAFF REPORT
April 16, 2015**

BZA-1930
JERRY DOWNHAM
Variance

Staff Report
April 16, 2015

REQUEST MADE, PROPOSED USE, LOCATION:

Petitioner, with consent and on behalf of the owner, is requesting a side setback variance of 2' 8" instead of the required 6' to legitimize an addition currently under construction to the front of a home located at 227 East 375 South. The addition's construction appears to have begun in 2014 without a building permit. The 0.42 acre property is located just east of Old US 231, Wea 8(SW) 22-4.

AREA ZONING PATTERNS:

The property is primarily zoned R1 (Single-family Residential) with some FP (Flood Plain) zoning on the southern end. Homes to the east and west are zoned R1 and R1B zoning is north across CR 375. R3 zoning can be found to the northeast.

AREA LAND USE PATTERNS:

The site in question contains a single-family home and two detached storage buildings. Other single-family homes are located to the east and west. North, across CR 375, are farm fields and south of the site are woods and the Wea Creek.

TRAFFIC AND TRANSPORTATION:

CR 375 South is classified as an urban local road; traffic counts taken in 2013 indicate that just over 1,000 vehicles pass this site daily.

ENVIRONMENTAL AND UTILITY CONSIDERATIONS:

Well and septic serve the use.

STAFF COMMENTS:

Petitioner is requesting a side setback variance for a nearly completed home addition. The house was originally built in 1953 before zoning took effect in the County so the home's side setback of 1.4' at its nearest point (The home angles away slightly from the side lot line.) is considered legally nonconforming. Earlier this year, the Building Commission "red-tagged" the site because no building permit had been issued for the subject improvement. According to UZO 5-1-6 (b), an addition could be built on to this nonconforming structure, but the addition would need to meet the requirements of the ordinance today. However, the addition was constructed to be in line with the existing home, thus the reason for this request.

The definition of hardship in the UZO states that self-imposed situations cannot be

considered a hardship. It states “self-imposed situations include...any development initiated in violation of the standards of this ordinance”. Because the addition was built without the benefit of a building permit, and in violation of the ordinance, staff cannot find an ordinance-defined hardship.

Regarding the ballot items:

1. The Area Plan Commission on April 15, 2015 determined that the variance requested **IS NOT** a use variance.

And it is staff’s opinion that:

2. Granting this variance **WILL** be injurious to the public health, safety, and general welfare of the community. The neighboring home to the west appears to be separated from this home addition by less than 10’, which does not provide adequate fire separation.
3. Use and value of the area adjacent to the property included in the variance request **WILL** be affected in a substantially adverse manner. A setback of 2’ 8” does not provide enough room for routine maintenance of the addition without trespassing onto the neighboring lot.
4. The terms of the zoning ordinance are being applied to a situation that **IS** common to other properties in the same zoning district. Many of the homes in this area were built before the zoning ordinance was adopted in 1965 and are located on long skinny lots; some do not meet the required setbacks. While the rear of this site and neighboring lots slope down to the Wea Creek, ample flat areas do exist in which to build.
5. Strict application of the terms of the zoning ordinance **WILL NOT** result in an unusual or unnecessary hardship as defined in the zoning ordinance. There is adequate room to build an addition to the home while still meeting ordinance standards.

Note: Questions 5a. and 5b. need only be answered if a hardship is found in Question 5 above.

5a. The hardship involved **IS** self-imposed because the improvement was initiated without benefit of a building permit.

5b. The variance sought **DOES NOT** provide only the minimum relief needed to alleviate the hardship because there is no ordinance-defined hardship.

STAFF RECOMMENDATION:

Denial